

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JULY 3, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE APRIL 28, 2003

SENATE BILL

No. 551

Introduced by Senator Speier
(Coauthor: Assembly Member Lieber)

February 20, 2003

An act to add Section 758.5 to the Insurance Code, relating to auto insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as amended, Speier. Insurance: automotive repair dealers.

Existing law generally regulates insurers by, among other things, defining certain unlawful practices.

This bill would *codify existing regulatory law and would* prohibit an insurer from requiring that an automobile be repaired at a specific automotive repair dealer, as defined *shop*. It would also ~~place specified restrictions on an insurer's ability to recommend or suggest an automotive repair dealer. The bill would require, if the insured chooses the repair dealer, that the insurer pay for repairs to be made in a workmanlike manner, and in no less time than if the automobile was repaired at the repair dealer recommended by the insurer, and would prohibit the insurer from limiting or discounting the reasonable repair costs based on the charges that would have been incurred at the insurer's chosen repair dealer. It would make an insurer who violates these provisions liable for civil penalties~~ *prohibit an insurer from suggesting*

or recommending that an automobile be repaired at a specific repair shop unless the claimant requested the referral or the claimant is informed, in writing, of his or her rights, as specified. This bill would also require the insurer, if the suggestion or recommendation that an automobile be repaired at a specific repair shop is contained in the insurance contract, to disclose that provision, in writing at specified times, and if the insured chooses that repair shop, not limit or discount the reasonable repair costs, as specified.

~~The bill would grant the Insurance Commissioner specified powers to enforce these provisions, and would require the commissioner to adopt regulations to implement them.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~—no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. This act shall be known as the “Auto Repair~~
2 SECTION 1. Section 758.5 is added to the Insurance Code, to
3 read:
4 758.5. (a) No insurer shall require that an automobile be
5 repaired at a specific repair shop.
6 (b) No insurer shall suggest or recommend that an automobile
7 be repaired at a specific repair shop unless either of the following
8 applies:
9 (1) A referral is expressly requested by the claimant.
10 (2) The claimant has been informed in writing of the right to
11 select the repair facility and the insurer shall cause the damaged
12 vehicle to be restored to its condition prior to the loss at no
13 additional cost to the claimant other than as stated in the policy
14 or as is otherwise allowed by law. If the recommendation of a
15 repair shop is done orally, the insurer shall provide the information
16 contained in this paragraph, as noted in the statement below, to the
17 claimant at the time the recommendation is made. The insurer shall
18 send the written notice required by this paragraph within five
19 calendar days from the oral recommendation. The written notice
20 required by this paragraph shall include the following statement
21 plainly printed in no less than 10-point type:
22 “WE ARE PROHIBITED BY LAW FROM REQUIRING THAT
23 REPAIRS BE DONE AT A SPECIFIC REPAIR SHOP. YOU ARE
24 ENTITLED TO SELECT THE AUTO BODY REPAIR SHOP TO

1 REPAIR DAMAGE COVERED BY US. WE HAVE
2 RECOMMENDED A REPAIR SHOP THAT WILL REPAIR YOUR
3 DAMAGED VEHICLE. AS YOU HAVE AGREED TO USE OUR
4 RECOMMENDED REPAIR SHOP, WE WILL CAUSE THE
5 DAMAGED VEHICLE TO BE RESTORED TO ITS CONDITION
6 PRIOR TO THE LOSS AT NO ADDITIONAL COST TO YOU
7 OTHER THAN AS STATED IN THE INSURANCE POLICY OR
8 AS OTHERWISE ALLOWED BY LAW. IF YOU EXPERIENCE A
9 PROBLEM WITH THE REPAIR OF YOUR VEHICLE, PLEASE
10 CONTACT US IMMEDIATELY FOR ASSISTANCE.”

11 (c) Any insurer that, by the insurance contract, suggests or
12 recommends that an automobile be repaired in a particular repair
13 shop shall also do both of the following:

14 (1) Prominently disclose the contractual provision in writing to
15 the insured at the time the insurance is applied for and at the time
16 the claim is acknowledged by the insurer.

17 (2) If the claimant elects to have the vehicle repaired at the shop
18 of his or her choice, the insurer shall not limit or discount the
19 reasonable repair costs based on charges that would have been
20 incurred had the vehicle been repaired by the insurer’s chosen
21 shop.

22 ~~Consumer Choice Act of 2003.”~~

23 ~~SEC. 2.—The Legislature finds and declares the following:~~

24 ~~(a) Thousands of California consumers each year require repair~~
25 ~~of their vehicles as a result of collision or other damage.~~

26 ~~(b) As a result of automobile collisions and other damage,~~
27 ~~many consumers make insurance claims.~~

28 ~~(c) California consumers are entitled to select an auto repair~~
29 ~~shop of their choice to repair auto damage.~~

30 ~~(d) Existing laws regulating the consumer’s right to choose an~~
31 ~~auto repair shop are weak.~~

32 ~~(e) Accordingly, the Legislature has determined that it is~~
33 ~~necessary to strengthen the existing auto repair consumer choice~~
34 ~~laws.~~

35 ~~SEC. 3.—Section 758.5 is added to the Insurance Code, to read:~~

36 ~~758.5.—(a) It is unlawful for an insurer, including an affiliate~~
37 ~~or subsidiary of an insurer or a third party acting on the insurer’s~~
38 ~~behalf, in connection with a claim, to require that an automobile~~
39 ~~be repaired at a specific automotive repair dealer, as defined in~~
40 ~~subdivision (a) of Section 9880.1 of the Business and Professions~~

1 ~~Code, or to suggest or imply that the automotive repair dealer~~
2 ~~identified and chosen by the insured or claimant is inferior or~~
3 ~~inconvenient.~~

4 ~~(b) It is unlawful for an insurer, including an affiliate or~~
5 ~~subsidiary of an insurer or a third party acting on the insurer's~~
6 ~~behalf, in connection with a claim, to require, direct, suggest, or~~
7 ~~recommmend any of the following:~~

8 ~~(1) That an automobile not be repaired at a specific automotive~~
9 ~~repair dealer.~~

10 ~~(2) That an automobile be repaired at a specific automotive~~
11 ~~repair dealer after the insured or claimant identifies and chooses~~
12 ~~an automotive repair dealer.~~

13 ~~(c) It is unlawful for an insurer, including an affiliate or~~
14 ~~subsidiary of an insurer or a third party acting on the insurer's~~
15 ~~behalf, in connection with a claim, to suggest or recommmend that~~
16 ~~an automobile be repaired at a specific automotive repair dealer,~~
17 ~~unless one of the following conditions exists:~~

18 ~~(1) The suggestion or recommendation of an automotive repair~~
19 ~~dealer is expressly requested by the insured or claimant and the~~
20 ~~insurer complies with paragraph (2).~~

21 ~~(2) The insured or claimant has been informed in writing of the~~
22 ~~right to select the automotive repair dealer. If the recommendation~~
23 ~~of the automotive repair dealer is made orally, the insurer shall~~
24 ~~provide the statement contained in this paragraph to the insured or~~
25 ~~claimant at the time the recommendation is made. The insurer shall~~
26 ~~send the written notice required by this paragraph within five~~
27 ~~calendar days from the oral recommendation. The written notice~~
28 ~~required by this paragraph shall include the following statement~~
29 ~~plainly printed in no less than 10-point type:~~

30
31 ~~“WE ARE PROHIBITED BY LAW FROM REQUIRING THAT~~
32 ~~REPAIRS BE MADE AT A SPECIFIC REPAIR SHOP. YOU~~
33 ~~ARE ENTITLED TO SELECT THE SHOP TO REPAIR~~
34 ~~DAMAGE COVERED BY US. WE HAVE RECOMMENDED A~~
35 ~~REPAIR SHOP THAT WILL REPAIR YOUR DAMAGED~~
36 ~~VEHICLE. AS YOU HAVE AGREED TO USE OUR~~
37 ~~RECOMMENDED REPAIR SHOP, WE WILL CAUSE THE~~
38 ~~DAMAGED VEHICLE TO BE RESTORED TO ITS~~
39 ~~CONDITION PRIOR TO THE LOSS AT NO ADDITIONAL~~
40 ~~COST TO YOU OTHER THAN AS STATED IN THE~~

1 ~~INSURANCE POLICY OR AS OTHERWISE ALLOWED BY~~
2 ~~LAW. IF YOU EXPERIENCE A PROBLEM WITH THE~~
3 ~~REPAIR OF YOUR VEHICLE, PLEASE CONTACT US~~
4 ~~IMMEDIATELY FOR ASSISTANCE.”~~

5
6 (d) ~~If an insured or claimant chooses to have the damaged~~
7 ~~automobile repaired at the automotive repair dealer recommended~~
8 ~~by the insurer, the insurer shall cause the damaged vehicle to be~~
9 ~~restored to its condition prior to the loss at no additional cost to the~~
10 ~~insured or claimant, other than a deductible, if applicable.~~

11 (e) ~~If the insured or claimant elects to have the automobile~~
12 ~~repaired at the automotive repair dealer of his or her choice, the~~
13 ~~insurer shall pay an amount that will allow for repairs to be made~~
14 ~~in a workmanlike manner, and in no less time than if the~~
15 ~~automobile was repaired at the automotive repair dealer~~
16 ~~recommended by the insurer, less any applicable deductible.~~

17 (f) ~~If the insured or claimant elects to have the vehicle repaired~~
18 ~~at the automotive repair dealer of his or her choice, the insurer shall~~
19 ~~not limit or discount the reasonable repair costs based on the~~
20 ~~charges that would have been incurred had the vehicle been~~
21 ~~repaired by the insurer’s chosen automotive repair dealer.~~

22 (g) ~~An insurer shall not issue or deliver an insurance policy in~~
23 ~~this state unless the policy provisions are consistent with or more~~
24 ~~favorable to the insured than the provisions of this section.~~

25 (h) ~~The powers of the commissioner to enforce this section~~
26 ~~shall include those granted in Article 6.5 (commencing with~~
27 ~~Section 790) of Chapter 1 of Part 2 of Division 1. Any person who~~
28 ~~violates this section shall be deemed to have violated that article,~~
29 ~~and shall be liable to the state for a civil penalty to be fixed by the~~
30 ~~commissioner pursuant to Sections 790.035 and 790.05.~~

31 (i) ~~The commissioner shall promulgate regulations to~~
32 ~~implement this section.~~

33 (j) ~~Upon the effective date of this section, the commissioner~~
34 ~~shall notify insurers in writing of the provisions of this section.~~